

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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HAEMONETICS CORP.,	:	
	:	
Plaintiff,	:	
v.	:	Civil Action Nos.
	:	05-12572-NMG
FENWAL, INC.,	:	09-12107-NMG
	:	
Defendant.	:	
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**AFFIDAVIT OF TIMOTHY D. JOHNSTON**  
**IN SUPPORT OF FENWAL, INC.'S MOTION FOR SUMMARY JUDGMENT**

I, Timothy D. Johnston, hereby declare on oath as follows:

1. I am a partner at the law firm of Nutter McClennen & Fish LLP, which represents Fenwal, Inc. in the above-captioned matter.
2. A true and complete copy of United States Patent No. 6,705,983 (the "'983 patent") is attached as Exhibit 1.
3. A true and complete copy of the prosecution history of the '983 patent is attached as Exhibit 2.
4. A true and complete copy of the Preliminary Amendment dated October 5, 2001 from the prosecution history of the '983 patent is attached as Exhibit 3.
5. A true and complete copy of the Office Action mailed on April 3, 2003 from the prosecution history of the '983 patent is attached as Exhibit 4.

6. A true and complete copy of the amendment and response titled “Response A” dated September 11, 2003 from the prosecution history of the ’983 patent is attached as Exhibit 5.

7. A true and complete copy of the relevant pages of the transcript from day six (January 26, 2009) of the jury trial in *Haemonetics Corp. v. Baxter Healthcare Corp. & Fenwal, Inc.*, C.A. No. 05-12572-NMG (the “2005 action”) is attached as Exhibit 6.

8. A true and complete copy of the December 22, 2009 Complaint (2005 D.I. 1)<sup>1</sup> in the 2005 action is attached as Exhibit 7.

9. A true and complete copy of the Claims Being Asserted (2005 D.I. 22) in the 2005 action is attached as Exhibit 8.

10. A true and complete copy of the Plaintiff’s *Markman* Claim Construction Brief (2005 D.I. 32) in the 2005 action is attached Exhibit 9.

11. A true and complete copy of Exhibit C titled “Table A – Stipulated Constructions of the ’983 Patent” to Plaintiff’s *Markman* Claim Construction Brief (2005 D.I. 32) in the 2005 action is attached as Exhibit 10.

12. A true and complete copy of the Defendant Fenwal’s Motion for Partial Summary Judgment of Noninfringement (2005 D.I. 54) in the 2005 action is attached as Exhibit 11.

13. A true and complete copy of the Memorandum and Order dated September 16, 2008 (2005 D.I. 71) in the 2005 action is attached as Exhibit 12.

14. A true and complete copy of the relevant pages of the transcript from day seven (January 27, 2009) of the jury trial in the 2005 action is attached as Exhibit 13.

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<sup>1</sup> References to “2005 D.I.” are to docket entries in Civil Action No. 05-12572-NMG.

15. A true and complete copy of the Verdict Form (2005 D.I. 283) in the 2005 action is attached as Exhibit 14.

16. A true and complete copy of the Permanent Injunction and Provisional Royalty (2005 D.I. 329) in the 2005 action is attached as Exhibit 15.

17. A true and complete copy of the Notice of Appeal dated August 27, 2009 (2005 D.I. 337) in the 2005 action is attached as Exhibit 16.

18. A true and complete copy of the Fenwal Press Release dated December 7, 2009 is attached as Exhibit 17.

19. A true and complete copy of the December 14, 2009 Complaint in *Haemonetics Corp. v. Fenwal, Inc.*, C.A. No. 09-12107-NMG (2009 D.I. 1)<sup>2</sup> (the “2009 action”) is attached as Exhibit 18.

20. A true and complete copy of Fenwal, Inc.’s Motion for Summary Judgment of Noninfringement (2009 D.I. 8) in the 2009 action is attached as Exhibit 19.

21. A true and complete copy of Plaintiff Haemonetics Corporation’s Opposition to Defendant Fenwal, Inc.’s Motion for Summary Judgment and Cross-Motion for Partial Summary Judgment Motion (2009 D.I. 44) in the 2009 action is attached as Exhibit 20.

22. A true and complete copy of the Federal Circuit’s June 2, 2010 decision in *Haemonetics Corp. v. Baxter Healthcare Corp.*, 607 F.3d 776 (Fed. Cir. 2010) (the “Federal Circuit appeal”) is attached as Exhibit 21.

23. A true and complete copy of the Defendant Baxter’s Opening *Markman* Brief (2005 D.I. 30) in the 2005 action is attached as Exhibit 22.

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<sup>2</sup> References to “2009 D.I.” are to docket entries in Civil Action No. 09-12107-NMG.

24. A true and complete copy of the Brief of Plaintiff-Appellee in the Federal Circuit appeal is attached as Exhibit 23.

25. A true and complete copy of the Petition for Rehearing and Petition for Rehearing En Banc of Plaintiff-Appellee Haemonetics Corporation in the Federal Circuit appeal is attached as Exhibit 24.

26. A true and complete copy of the July 13, 2010 Status Conference Transcript (2009 D.I. 55) in the 2005 and 2009 actions is attached as Exhibit 25.

27. A true and complete copy of the denial of the Petition for Rehearing and Petition For Rehearing En Banc of Plaintiff-Appellee Haemonetics Corporation in the Federal Circuit appeal is attached as Exhibit 26.

28. A true and complete copy of the Federal Circuit's Order issuing its Judgment as a mandate in the Federal Circuit appeal is attached as Exhibit 27.

29. A true and complete copy of Haemonetics' Infringement Contentions (2009 D.I. 59) in the 2009 action is attached as Exhibit 28.

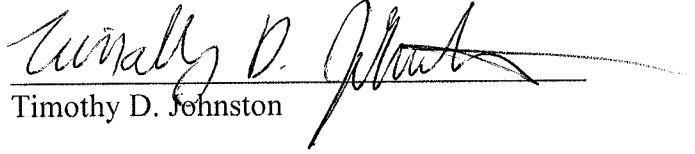
30. A true and complete copy of Haemonetics' Motion for Status Conference (2009 D.I. 60) in the 2009 action is attached as Exhibit 29.

31. A true and complete copy of Fenwal, Inc.'s Opposition to Haemonetics Corporation's Motion for Status Conference (2009 D.I. 61) in the 2009 action is attached as Exhibit 30.

32. A true and complete copy of the Memorandum & Order dated October 13, 2010 (2009 D.I. 65) in the 2009 action is attached as Exhibit 31.

33. A true and complete copy of the Declaration of Richard I. Brown is attached as Exhibit 32.

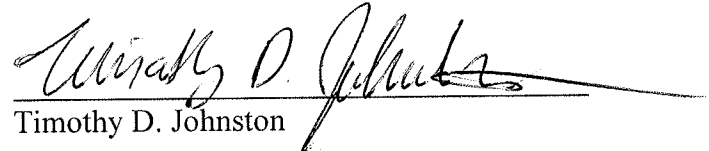
SIGNED UNDER THE PENALTIES OF PERJURY THIS 12th DAY OF NOVEMBER 2010.

  
Timothy D. Johnston

**CERTIFICATE OF SERVICE**

I certify that, on November 12, 2010, this document (filed through the ECF system) will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: November 12, 2010

  
Timothy D. Johnston